IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1806 OF 2005

Anand @ Pangya Jayram Bhagat ... Applicant

versus

The State of Maharashtra ... Respondent

...

Mr.V.V. Purwant, for the Applicant.

Mr.K.V. Saste, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

28th March 2005

P.C.:

. Heard Counsel for the parties. Perused the record. The Applicant has been named as accused along with his brother, accused No.1, in the offence registered as CR.No.I-163/2004 registered with Kalwa Police Station. The prosecution case is that the Applicant’s brother had threatened the deceased and was bent upon to marry the girl with whom the deceased was in

love. The Applicant is implicated on the basis of recovery of blood stained clothes and knife from the residence of the Applicant. It is not in dispute that the Applicant and accused No. 1 were staying together in the same house. This circumstance by itself does not indicate the participation of the Applicant in the commission of the crime. In any case, it is a weak circumstance to record finding of guilt against the Applicant. The offence charged is under section 302, 201 read with section 34, Indian Penal Code. As there is no evidence to indicate the overt act of the Applicant in the commission of the crime, merely on the basis of recovery of blood stained clothes and knife, the prosecution cannot bring home the guilt qua the Applicant.

. To get over this position, learned A.P.P. relied on another circumstance. According to the prosecution, the Applicant was in constant contact with Hanif, the co-accused, on 17th September 2004. The telephone calls have been exchanged between the said Hanif and the Applicant on 17th September 2004, not only throughout the day, but the frequency increased

in or around the time of commission of the offence. The offence is alleged to have taken place between 11 to 11.30 p.m. It is stated that telephone call was made at 10.59 p.m. and thereafter at 11.17, SMS was sent and, again, telephone call was made at 11.18 p.m. This evidence, however, would reinforce the position that the Applicant and Hanif were not moving together at the relevant time when the offence allegedly took place between 11 to 11.30 p.m. In other words, the presence of the Applicant at the scene of offence on the date of incident is questionable. These are prima facie views that I am expressing only to consider the prayer for bail made by the present Applicant. As investigation is complete and charge sheet has been filed, and as there are no antecedents against the Applicant, application is allowed on the following conditions.

(A) The Applicant is directed to be released on bail in connection with CR.No.I-163/2004 registered with Kalwa Police Station on executing personal bond in the sum of Rs.20,000/- (Rupees Twenty

thousand only) with two local sureties in the like amount.

(B) The Applicant shall not influence the prosecution witnesses nor shall tamper with the prosecution evidence in any manner whatsoever.

(C) The Applicant shall report to the concerned police station once in a month on first Saturday of every English calendar month between 10 a.m. to 2 p.m. during the pendency of the trial.

(D) The Applicant shall co-operate for the early disposal of the trial. If the trial Court is of the opinion that the Applicant is in any manner responsible for the delay in disposal of the trial, that opinion be recorded in the roznama, which can be a ground for cancellation of bail.

. Application disposed of on the above terms.

(A.M.KHANWILKAR,J.)